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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 - - - - - x

5 In the Matter of:

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7 ADMINISTRATIVE CASE RE: 08-1789 (SECURITIES INVESTMENT

8 ADVERSARY PROCEEDING),

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10 Debtor.

11 - - - - - x

12 Adv. Case No. 08-01789-smb

13 - - - - - x

14 SECURITIES INVESTOR PROTECTION CORPORATION,

15 Plaintiff,

16 v.

17 BERNARD L. MADOFF INVESTMENT SECURITIES, L.L.C.,

18 Defendants.

19 - - - - - x

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Page 2

1 Adv. Case No. 10-05390-smb

2 - - - - - x

3 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

4 MADOFF INVESTMENT SECURITIES LLC,

5 Plaintiff,

6 v.

7 1096-1100 RIVER ROAD ASSOCIATION,

8 Defendants.

9 - - - - - x

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11 U.S. Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

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15 December 21, 2016

16 10:01 AM

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23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

Page 3

1 Hearing re: Interim Fee Application of Browne Jacobson, LLP
2 As Special Counsel To The Trustee
3
4 Hearing re: Interim Fee Application of Triay Stagnetto
5 Neish As Special Counsel To The Trustee
6
7 Hearing re: Interim Fee Application of UGGC & Associes As
8 Special Counsel To The Trustee
9
10 Hearing re: Interim Fee Application of Graf & Pitkowitz
11 Rechtsanwalte GMBH As Special Counsel To The Trustee
12
13 Hearing re: Interim Fee Application of Werder Vigano As
14 Special Counsel To The Trustee
15
16 Hearing re: Interim Fee Application of Williams, Barristers
17 & Attorneys As Special Counsel To The Trustee
18
19 Hearing re: Interim Fee Application Of Cochran Allan As
20 Special Counsel To The Trustee
21
22 Hearing re: Interim Fee Application of Eugene F. Collins As
23 Special Counsel to the Trustee
24
25 Hearing re: Interim Fee Application of Soroker Agmon

1 Nordman As Special Counsel To The Trustee

2

3 Hearing re: Interim Fee Application of SCA Creque As

4 Special Counsel To The Trustee

5

6 Hearing re: Interim Fee Application of Young Conaway

7 Stargatt & Taylor LLP As Special Counsel to the Trustee

8

9 Hearing re: Interim Fee Application of Trustee And Baker &
10 Hostetler LLP

11

12 Hearing re: Interim Fee Application of Munari Giudici
13 Maniglio Panfili e Associati As Special Counsel To The
14 Trustee

15

16 Hearing re: Interim Fee Application of Higgs & Johnson
17 (Formerly Higgs Johnson Truman Bodden & Co.) As Special
18 Counsel to the Trustee

19

20 Hearing re: Interim Fee Application of Kelley, Wolter &
21 Scott, Professional Association As Special Counsel To The
22 Trustee

23

24 Hearing re: Interim Fee Application of Schiltz & Schiltz As
25 Special Counsel To The Trustee

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1 Hearing re: Interim Fee Application of Windels Marx Lane &
2 Mittendorf, LLP

3

4 Hearing re: Trustees Motion to Affirm His Determinations
5 Denying Claims of Claimants Holding an Interest in Sienna
6 Partnership, L.P., Katz Group Limited Partnership and
7 Fairfield Pagma Associates, L.P.

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9 Hearing re: Hearing on Attorney Substitution

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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6 New York, NY 10111

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18 BY: MARK B. CONIAN

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22 1667 K Street, Suite 1000

23 Washington, D.C. 20006

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25 BY: KEVIN H. BELL

1 **ALSO PRESENT TELEPHONICALLY:**

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3 **PATRICK MOHAN**

4 **DAVID J. SHEEHAN**

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1 P R O C E E D I N G S

2 CLERK: Please be seated.

3 THE COURT: Good morning. Madoff?

4 MR. SHEEHAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. SHEEHAN: David Sheehan, Baker Hostetler for
7 the Trustee. And we're here today on the 22nd application
8 for interim compensation by the Trustee and associated
9 counsel working with the Trustee both here as conflict
10 counsel, and around the world, I guess in terms of other
11 colleagues that help us out.

12 Your Honor, there are no objections, I'll note
13 that at the outset, to the application before you today, or
14 any of the applications. So that if I could just cover a
15 few things, and highlight the items that are in the report.

16 THE COURT: And it's a good time to give an update
17 on the case.

18 MR. SHEEHAN: Sure. Sure. Happy to.

19 Starting first with something we don't talk very
20 much about, we do have a lot of claims that are still to be
21 determined, and Your Honor's heard many of those but there
22 will still be more determinations, several hundred in the
23 multi-claim capacity that Your Honor's heard many on
24 already. But we've grouped them differently based on their
25 relationships to each other. And then there are several

1 hundred more of not multi-claim, but an individual direct
2 claim capacity that are a variety of things. They might
3 include antecedent debt or something that's already been
4 decided by the Court, but their claim has not been
5 determined and therefore we have to bring them before Your
6 Honor to finalize it.

7 THE COURT: How many of those are direct, active
8 objections?

9 MR. SHEEHAN: Several hundred. I'm not sure of an
10 exact amount, I think it's about 3 or 400, Your Honor. So
11 we should be able to start mustering those together and
12 getting them before you as soon as possible.

13 I think a significant amount that we should
14 announce to the Court is is that customer claims that have
15 been allowed by the Trustee now exceed over \$15 billion. So
16 while we've collected 11.4, we're still well short of the
17 amount that we've allowed, so even though with our next
18 distribution, which Your Honor will hear in January will go
19 over 60 cents, we still have a long way to go, just based on
20 the claims.

21 And there are 48 deemed determined. And Your
22 Honor, by way of explanation, a deemed determined claim, by
23 way of example would be Kingate where there is an \$825,000 -
24 - \$825 million claim where we've determined that we will,
25 you know, reach an accommodation with them. We can either

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1 settle, or if we lose we pay. So we reserved for that. So
2 we deemed them determined to be allowed, and when we make a
3 distribution of, for example, the next distribution will
4 have a reserve in it, that will take into account the 48
5 deemed determined claims so that in the unlikely outcome
6 that we should lose, that we will, at the end of the day,
7 have to pay them and we have to have that money in reserve.

8 With regard to the litigation itself, I'm giving
9 Your Honor an update. The cases themselves are moving along
10 as well as can be expected, given the fact that our
11 adversaries are pushing hard back on discovery. Your
12 Honor's familiar with that. So -- and with the decision
13 that Your Honor recently rendered on extraterritoriality, a
14 number of the subsequent transferees have now become third
15 parties, so we're pursuing them through The Hague and other
16 avenues of discovery that are available to us. So the
17 Trustee's busy there trying to gather that.

18 And of course we're also preparing, as Your Honor
19 might suspect, an appeal, which we're working on our
20 colleagues with so we can have a single order before Your
21 Honor hopefully in the near term, if not before the
22 holidays, certainly shortly thereafter. And the thought
23 there is is that we want to continue that discovery in the
24 event that the decision is reversed and we're turned back
25 down, so that we don't waste time here, while we can be

1 progressing the cases.

2 And in the event that we can't move forward some
3 of that discovery, for example, in Kingate we do have a
4 protective action that we've filed in the United Kingdom
5 against the now third party defendants or, you know, Ceretti
6 and Grosso and other third parties. That case has been
7 stayed, pending the decision here by Your Honor, nothing yet
8 has happened to unstay that. We have prepared an amended
9 bill of particulars that we're ready to file should the stay
10 be lifted. We're not focusing on that right now, we're
11 actually focusing more on the appeal itself and getting that
12 ready to move forward. Nor have our adversaries moved to
13 release that stay either.

14 THE COURT: I have to enter orders in these
15 adversary proceedings, though, based on the
16 extraterritoriality decision.

17 MR. SHEEHAN: Yes.

18 THE COURT: Or reports and recommendations, if
19 they haven't -- nobody's consented to the final order.

20 MR. SHEEHAN: I can give Your Honor a report on
21 that. We've been very successful, and everyone has
22 consented. I think we had the cooperation of the liaison
23 committee led by Sullivan and Worcester and they worked
24 cooperatively among the majority of the defendants. And we
25 are not only doing that, just to further report to Your

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1 Honor on the status of that, there were certain non-moving
2 defendants who feel as though under Your Honor's order, with
3 regard to comity, that they would be allowed to move before
4 Your Honor. The thought on our part and theirs, was to just
5 -- and you will see this in the order we're preparing, is a
6 stipulation and order that if they had moved, Your Honor
7 would have granted it, just so we can include them on the
8 appeal and not have further proceedings after the appeal
9 comes down, or while the appeal is pending have them making
10 motions, et cetera.

11 So we're trying to clean that off as well so that
12 the landscape before Your Honor will simply be those cases
13 that are direct, such as Kingate, we -- obviously as an
14 initial transferee, in cases of that quality will be the
15 ones Your Honor will be hearing motions on, et cetera.
16 And there are quite a few of those and we will be moving
17 forward on them.

18 The principal one is Tremont where Your Honor held
19 that it was not subject to extraterritoriality decisions, so
20 there are a number of significant subsequent transferees
21 there, and we are moving forward with that case as well.
22 That's all happening, so.

23 Now -- and that's why you'll see, if Your Honor
24 looks at the summary that we have of our foreign counsel,
25 that a few -- one may not be of -- Schlitz & Schlitz in

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1 Luxembourg, that's Alpha Prime, Your Honor just on the same
2 day issued that decision, that is a very active litigation,
3 as Your Honor well knows. It is moving forward and we are
4 actively participating in it, but more or less on the
5 sidelines. We keep a watchful eye on it, in the sense that
6 it may help us in terms of discovery that takes place there.

7 The other two significant ones are Soroker Agmon.
8 Soroker Agmon is the Magnify litigation in Israel. There we
9 have filed a complaint, it's being actively -- there's an
10 active motion process, there's a pending motion to dismiss.
11 There are actually two complaints there, one is a complaint
12 against the individual, Yair Green and certain of his family
13 members for transfers they received, and now we have a
14 separate action against the subsequent transferees from
15 Magnify through the Yeshaya Horowitz Association to
16 ultimately defendants such as Hebrew University, et cetera.

17 There our cause of action is predicated upon
18 unjust enrichment which is allowed there, there is no in
19 pari delicto in Israel. That's part of what's being
20 litigated. If we can't bring an in pari delicto bar
21 (indiscernible) in here, should be allowed to bring one in
22 Israel? So comity is everywhere in this case at this point.

23 So we're litigating that. It will probably most
24 likely be tried next year. The Israeli courts move quite
25 rapidly and they have a different discovery system there,

1 it's quite like England, you are required to produce all
2 discovery, you know, and there is no depositions. And you
3 just go to court and more often than not the affidavit
4 becomes the direct testimony and cross examination then
5 transpires. So the case will move faster, I think, than the
6 case here because we're facing still some motion practice
7 here as well. So -- but we are going to move on both
8 fronts, and if the case gets started here first, it gets
9 started here first.

10 THE COURT: Do you have any cases teed up for
11 trial?

12 MR. SHEEHAN: Pardon?

13 THE COURT: Any cases teed up for trial?

14 MR. SHEEHAN: Your Honor, I think the only one
15 that's teed up is Merkin which is under Your Honor's
16 consideration on a motion for summary judgment. That's
17 ready to go.

18 THE COURT: None of the innocent investor cases?

19 MR. SHEEHAN: Oh, oh, yes. What we're doing there
20 is --

21 THE COURT: -- like Kohn and Auberbach and those?

22 MR. SHEEHAN: Yeah, all those are teed up. And as
23 a matter of fact, at this point, following -- what we've
24 done is we've teed up and we've reached out to Mr. Kirby and
25 his colleagues, that on those cases that we feel as though

1 we have summary judgment capability, we are asking them to
2 do that.

3 Because Your Honor will recall, at the last
4 hearing we had the -- you know, an FOB case and do you
5 remember that?

6 THE COURT: FOB?

7 MR. SHEEHAN: FBO, I'm sorry, I always say FOB,
8 I'm backing into my international stuff. But anyway, you
9 know, for the benefit of, I don't know if you recall that
10 case, but I don't want to get into details here, because Ms.
11 Chaitman isn't. But I think there are going to be cross
12 motions for summary judgment there. And Your Honor
13 suggested that perhaps we should look at other cases for
14 that purposes. We have done that; we've got four that we're
15 working on right now that we're looking to tee up with the
16 idea that eventually in that context we'll also have an
17 omnibus hearing on the insolvency Ponzi issue.

18 We did take Mr. Madoff's dep yesterday, I could --

19 THE COURT: What did he say?

20 MR. SHEEHAN: -- we didn't finish. I think Ms.
21 Chaitman and I are in agreement that we need another day, at
22 least.

23 THE COURT: Okay.

24 MR. SHEEHAN: We will submit a letter to Your
25 Honor requesting approval for that. But in the meantime

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1 we're working on all of those fronts to try to get those
2 cases in front of Your Honor in a fashion that can --
3 there's about 350-odd, maybe 367 more precisely, that are
4 left but those cases can all, I think, start moving now.
5 And I can report to you that we're doing very well with
6 Judge Moss. I don't know if he gives you reports, I would
7 assume --

8 THE COURT: No.

9 MR. SHEEHAN: -- he does.

10 THE COURT: I haven't spoken to him.

11 MR. SHEEHAN: But it's been very successful. I
12 think we're moving forward there. We intend to bring more.
13 We've asked some adversaries, they haven't agreed to go
14 there, so the more we can get in front of Judge Moss it
15 would be beneficial to us, Your Honor, and to the whole
16 process, rather than, you know, untidy your court with this
17 stuff.

18 THE COURT: I have a question about the summary
19 judgment motions. Isn't there a question, though, about
20 when the Ponzi Scheme began?

21 MR. SHEEHAN: Yes. What we're doing is there,
22 there's a number of these cases where the -- it started --
23 I'm sorry. It's after 1992, it goes back to the first day
24 of principal, so we're targeting those cases. There are
25 actually not a lot of them that actually go back, the good

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1 faith cases that go back prior to 1992, so -- and we are
2 focusing on those. Obviously the '92 issue will get
3 resolved down the road.

4 I think that may end up -- you know, that's
5 something to think about down the road is whether that ends
6 up in some kind of an omnibus proceeding because of the
7 nature of it, it affects a lot of people, I think. So we'll
8 have to look at that, we'll structure that for Your Honor.

9 The other firm that's been fairly busy is Williams
10 Barristers, they're in Bermuda. The reason for that is is
11 that that's Kingate. There's active litigation proceeding
12 there, as Your Honor is aware from your opinion, that is
13 being litigated by the Kingate management against other
14 third parties, such as Ceretti and Grosso, et cetera.

15 So we had separate litigation, very similar to
16 ours, as a result of a motion to dismiss that was brought by
17 the others. Because initially it was a mistake of fact case
18 and that wasn't going anywhere, so then they flipped it into
19 more of a case similar to our own which I think they were
20 having trouble with balancing, because they were sort of
21 arguing both sides there. You know, arguing that there was
22 a fraud but then saying to us there wasn't (indiscernible).
23 So in any event, that's an interesting thing that we have to
24 keep track of. It's actively being litigated, and I
25 understand there are settlement negotiations.

1 Our problem there is lack of transparency. We
2 cannot be in the courtroom when those -- it's kind of an odd
3 system. I still don't understand the British system, I must
4 tell you, there's a lot of lack of transparency there. For
5 example, I said earlier about all that discovery that goes
6 back and forth, we can't get access to any of that discovery
7 until its actually published in court, and then it becomes a
8 public document and then you get access to it.

9 Whereas here, we're having skirmishes over a lot
10 of third party documents we've gathered as a result of
11 2004s, and there's confidentiality associated with that, et
12 cetera. Whereas in England, no one would get any of that
13 until it was published in court. So our barristers there
14 are pretty active watching that and staying on top of it.

15 As you can see from the list of other foreign
16 counsel there is activity in many jurisdictions. In France,
17 that's mostly in -- even though the hours are significant,
18 we have no claim in France, what is going on there is there
19 are a lot of criminal proceedings, which unlike the United
20 States, we can participate in. We've been allowed to
21 participate in several of those which are proceeding against
22 parties that we have not sued, but were -- people that were
23 organizing the funds and putting them together, and
24 therefore we get access to information. So that's how we
25 use our French counsel for that, and it's been very

1 effective.

2 And of course we have our local counsel here,

3 Windels Marx, Young Conaway, Cochran Allan and Kelly Walter.

4 As Your Honor knows, you're familiar of course
5 with Windels Marx, they appear before Your Honor on a
6 regular basis, they've not done nothing but a superb job
7 since the beginning of the case. I can say the same for
8 their other colleagues. A significant amount of work is
9 done by them on all these cases. And it's through their
10 efforts, as well as some of our own, that this year we were
11 able to assemble a package of around \$400 million, round
12 numbers, which is the substance of our distribution network
13 now taking place, the big money there being, of course,
14 Chase and then -- which Your Honor's heard, and
15 (indiscernible), of course, and then other cases that were
16 (indiscernible) Windels.

17 I think you'll continue to see that activity.

18 There are cases that are in, you know, formation towards
19 settlement. It takes time. I think Your Honor's decision,
20 you know, sort of loosened it up a bit both ways, so we'll
21 see where that goes.

22 But overall I think that summarizes a lot of what
23 our activities have been that bring us here today. And in
24 light of all that, Your Honor, and the work done by all of
25 our outside counsel, I'd recommend that the applications be

1 approved.

2 THE COURT: Thank you.

3 MR. SHEEHAN: Thank you.

4 THE COURT: Does anyone else want to be heard?

5 MR. BELL: Kevin Bell on behalf of the Securities
6 Investor Protection Corporation. A couple of addenda to Mr.
7 statement. You -- on the motion that was filed last week
8 you will see that there is about \$11 million -- a billion
9 dollars involved and the Trustee's distributing about 9.7.
10 There's about -- a reserve of about \$2.4 billion for deemed
11 determined and customers whose claims are in the objection
12 phase.

13 The Circuit just kicked the appeal from Judge
14 Engelmayer's decision out to March from January. And there
15 are a number of dollars reserved with regard to claims
16 associated with that issue.

17 THE COURT: That's the interaccount transfer
18 issue?

19 MR. BELL: Interaccount transfer. Yes, Your
20 Honor. So --

21 THE COURT: And when is the argument?

22 MR. BELL: Well, it was supposed to be the week of
23 January 9 and there was just a notice from the Circuit to
24 put it out to sometime in March at the earliest.

25 THE COURT: Okay.

1 MR. BELL: So -- but a number of the dollars that
2 are tied up and a number of the customer objections all flow
3 from that guidance that Your Honor has issued and Judge
4 Engelmayer affirmed and hopefully the Circuit does also.

5 SIPC has supported -- has filed a recommendation
6 in support of all of the fee applications that have been
7 submitted. As I have said on the prior 21 applications,
8 SIPA reviews every entry on every page, makes comments on a
9 number of them, gets into dialogue with each and every
10 counsel that files an application.

11 You will see, at Paragraph 5 of SIPC's
12 recommendation on Baker Hostetler, that were -- that there
13 is, beyond the ten percent discount that we get from all
14 counsel, that the reduction is something in between 2 and
15 14.5 percent, including the ten percent in discussions with
16 SIPC. On Windels Marx, you will see at Paragraph 3 that the
17 reduction is 15.86.

18 So you know, SIPC's oversight, this is a no asset
19 case, there's no possibly of -- at this moment in time,
20 although there is always hope, which as we showed last week
21 when the Trustee filed his allocation motion this case is
22 past 60 percent in -- that will be distributed after the
23 Court's hearing on the 12th, if it's so fortunate to get the
24 Court's support or approved, and no appeal is taken, the
25 Trustee will be distributing later in the month, if not the

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1 first day of February, 60.098 cents on the dollar of every
2 allowed claim. That will take it down to only 922 allowed
3 but not fully satisfied claims, which have a range.

4 You know, you can tell there's a range. When you
5 look at the minimum payment being made of \$271 and the
6 maximum payment almost \$43 million, that proration has a way
7 of only allowing 31 customers to be fully satisfied, moving
8 from the not fully satisfied to the fully satisfied cases.

9 It's sort of the objection that you asked Mr.
10 Sheehan about. They're all -- there's really no straight
11 intersection on this case, it goes -- the profit withdrawal
12 that will be before Your Honor is tied up in a number of
13 other customer objections. So as we resolve the legal
14 matters up through the Supreme Court, and we've had time
15 based damages, though on a petition I would imagine
16 interaccount transfer will have a similar petition filed by
17 the same counsel, we will move them, because that is one of
18 SIPC's main concerns is that customer claims get resolved.

19 Clearly 1,333 of the 25 -- 2,200 plus allowed
20 claims, 1,333 will be fully satisfied after Your Honor
21 enters the order on or about January 12th, which is a
22 significant step SIPC has advanced almost \$850 million to
23 the Trustee and it's been paid back some of its subrogation
24 as customers have been allocated money to satisfy their
25 claims and SIPC advance wouldn't have been necessary if we

1 did back to the future, but clearly this case is extremely
2 successful. And that is all on the backs of the counsel
3 whose applications are before the Court.

4 You know, we are dealing with, when you figure,
5 almost 80 months' worth -- 80 invoices, 80 months' worth of
6 invoices by Baker Hostetler in this case and about maybe six
7 fewer by Windels when they were taking on in June, July of
8 2009. So the effort is significant, as you have seen in the
9 Trustee's report and the amount of funds that SIPC has
10 advanced to pay for this, but that is the congressional
11 intent, is that 1978, the statute was amended to take it out
12 of the situation that existed in the New York Stock Exchange
13 member Weiss, Voisin where the costs were pro-rataed against
14 allowed claims.

15 And Congress -- our board and Congress worked
16 together to create a statute that SIPC would fund all
17 expenses. And that is one of the reasons why you see
18 litigation about things you may not normally see in a
19 bankruptcy because the statutory intent is to try and get
20 the customers fully satisfied. And we still haven't gotten
21 (indiscernible) an F. I remember being in school when a 60
22 was an F so I would like us to see if we can get maybe to an
23 A+, you know, but that's what I said since the beginning,
24 but clearly 60 cents is significant.

25 In that context I would ask the Court to approve

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1 the fee applications and enter orders approving them. Thank
2 you, Your Honor.

3 THE COURT: Thank you. Does anyone else want to
4 be heard?

5 All right. I'll approve the fee applications in
6 light of SIPC's recommendation and the representation,
7 something I think we all know, that there will not be a
8 distribution to general creditors in this case.

9 Now in the past what have I allowed, 90 percent?

10 MR. SHEEHAN: Pardon, Your Honor?

11 THE COURT: What have I allowed, 90 percent of the
12 fees sought, and held back ten percent? I just don't
13 remember.

14 MR. SHEEHAN: No, I think that the ten percent
15 holdback is -- SIPC does that. We only get 90 percent of it
16 anyway.

17 THE COURT: Is that what I've done in the past,
18 just whatever the award is you --

19 MR. SHEEHAN: That's right.

20 THE COURT: All right.

21 MR. BELL: There's a ten percent discount before
22 the application is submitted to the Court and then there's a
23 ten percent holdback on the applications.

24 THE COURT: All right. You can submit an order.
25 Thank you very much.

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1 MR. SHEEHAN: Thank you, Your Honor.

2 MR. BELL: Thank you.

3 THE COURT: Next we have the motion to affirm the
4 terminations and one objection, I believe.

5 MS. ACKERMAN: Good morning, Your Honor.

6 Stephanie Ackerman on Baker & Hostetler on behalf of Irving
7 Picard, the Madoff Trustee. We're here today on the
8 Trustee's motion to affirm the determination of 18 claims
9 which were filed by individuals who invested in one of three
10 limited partnerships. One was based in New York, one in
11 Wyoming and one in the Cayman Islands. These are Sienna
12 Partnership, LP, the Katz Group Limited Partnership and
13 Fairfield Pagma Associates, LP.

14 The objecting claimants invested money in one of
15 the limited partnerships which in turn invested in BLMIS.
16 The objecting claimants had no financial relationship with
17 BLMIS, and did not own the assets that were entrusted to
18 BLMIS for the purpose of trading securities. The claimants
19 here, like those in prior motions before this Court, are not
20 customers, because in addition to not owning the assets
21 entrusted to BLMIS, they had no control over the funds
22 invested and were unknown to BLMIS. Thus, denial of these
23 claims is consistent with the many prior decisions in this
24 liquidation and the Second Circuit's decisions in Cruz and
25 Morgan Kennedy.

1 Your Honor, none of the objecting claimants
2 objected to the relief requested by the Trustee in the
3 pending motion. There was one objection filed by a
4 nonparty, Mr. Lamar Ellis filed an objection on behalf of
5 SIPC's memorandum in support of the Trustee's motion, on
6 behalf of the Lamar Ellis Trust. Mr. Ellis claims that SIPC
7 has failed to resolve the Trust's \$1 billion in identity --
8 the identity theft losses, excuse me and therefore the Court
9 should ignore SIPC's support and deny the Trustee's motion.

10 We feel the objection should be overruled for
11 several reasons. First, neither Mr. Ellis nor the Ellis
12 Trust are objecting claimants who invested in one of the
13 three limited partnerships at issue in the Trustee's motion,
14 therefore they do not have a direct financial stake in the
15 outcome of today's motion.

16 Second, neither the Trust nor Mr. Ellis has a
17 pecuniary interest in the SIPA liquidation. Their claims
18 were disallowed and their objections expunged in 2012 by
19 this Court's order granting the Trustee's third omnibus
20 motion.

21 Final -- further, Mr. Ellis has admitted that
22 neither he nor the Trust ever held an account with BLMIS and
23 therefore they have no claim to the BLMIS customer fund.

24 Finally, the relief sought by Mr. Ellis in his
25 objection is far from clear, but appears, again, to be

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1 related to his claim against the Madoff Victim Fund. As
2 such, no outcome related to the Trustee's motion today could
3 resolve his objection or his claim, in other words the harm
4 he claims cannot be redressed by this Court nor is it
5 traceable to this liquidation.

6 For these reasons, Your Honor, Mr. Ellis and the
7 Ellis Trust lacks standing as parties in interest to object
8 to the current motion. AS such, we respectfully request
9 that the objection be overruled and the Trustee's motion be
10 granted.

11 And one item -- one further item, Your Honor, Mr.
12 Ellis and the Ellis Trust are not parties in interest to the
13 SIPA liquidation and as such, we believe the irrelevant
14 notices that he continues to receive as being listed on the
15 master service list are contributing greatly to his
16 confusion. And as such, the Trustee would like to remove
17 Mr. Ellis and the Ellis Trust from the master service list
18 in the main case.

19 THE COURT: Well, you'll have to make a motion on
20 notice to Mr. Ellis for that one.

21 MS. ACKERMAN: Sure. Certainly, thank you.

22 THE COURT: All right. Does anyone want to be
23 heard in connection with this objection?

24 MR. BELL: Your Honor, SIPC supports the Trustee's
25 position both on the motion on the multi-claims on Mr.

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1 Ellis's not being a party in interest.

2 THE COURT: Thank you. I'll grant the motion and
3 overrule the objection. The motion itself deals with a
4 situation which has become familiar where people who are
5 entities that invest in a fund that then invests with BLMIS
6 and have asserted customer claims, but they're not customers
7 consistent to the readings of this Court, the District Court
8 and the Second Circuit because they didn't entrust money to
9 BLMIS and had no contact with BLMS -- BLMIS.

10 As far as Mr. Ellis is concerned, I'll overrule
11 his objection for all the reasons you stated. Unfortunately
12 he seems to be confused but in any event whatever claim he
13 might have is not implicated here because there's no
14 allegation that he was an investor in any of the funds that
15 are the subject of the current motion. So you can submit an
16 order, maybe send a copy to Mr. Ellis after it's signed.

17 Okay?

18 MS. ACKERMAN: Thank you, Your Honor.

19 THE COURT: Okay? Thank you.

20 Picard versus 1096-1100 River Road. The reason I
21 scheduled a hearing on the substitution motion is I wanted
22 to disclose that a few months ago my son joined Gibbons as
23 counsel. I don't think that that -- unless my impartiality
24 might be reasonably questioned. He's an M&A lawyer, not a
25 litigator and as far as I know he has nothing to do with

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1 this case and wants nothing to do with this case.

2 So obviously you are free if you disagree, to make
3 a motion, that is your right. But I don't intend to do this
4 -- to take this any further, except I did want to make that
5 disclosure.

6 So I'll approve the substitution. Do I have an
7 order?

8 MR. CONLAN: Good morning, Your Honor. Mark
9 Conlan with Gibbons. I can hand one up, if you'd like?

10 THE COURT: Yeah, but I need either a disk or you
11 can email an order to chambers. We'll give you the chambers
12 email address.

13 MR. CONLAN: I believe our paralegal did that.

14 THE COURT: Yeah, but if I don't get it at the
15 hearing or after the hearing it just gets separated from the
16 rest of the papers. But then it sounds like you have the
17 email address. Let me just see whether -- it's easier if
18 you just email it to chambers, in a Word format. Okay?

19 MR. CONLAN: Yes, sir.

20 MR. MURPHY: Your Honor, Keith Murphy, Baker
21 Hostetler for the Trustee. No objection to the
22 substitution, of course, and no issue with the relationship
23 at all.

24 THE COURT: You don't have to tell me that now,
25 you reserve the right to make whatever motion you deem

1 appropriate.

2 MR. MURPHY: Thank you, Your Honor.

3 THE COURT: All right? Thanks very much.

4 MR. MURPHY: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at
6 10:31 AM)

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I N D E X

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

Sonya
6 Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde
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25 Date: December 22, 2016